

**DEED RESTRICTION AND GRANT OF EASEMENT AGREEMENT TO PROTECT
PARK LAND FOR PUBLIC USE AND ACCESS IN PERPETUITY**

THIS DEED RESTRICTION AND GRANT OF EASEMENT AGREEMENT TO PROTECT PARK LAND FOR PUBLIC USE AND ACCESS IN PERPETUITY (the “Agreement”) is entered into as of this ____ day of _____, 2007 by [i] **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government and governmental successor to Jefferson County, Kentucky whose address is 527 W. Jefferson Street, Louisville, Kentucky 40202 (“Grantor”), in favor of [ii] **21ST CENTURY PARKS, INC.**, a Kentucky non-profit corporation, whose address is 471 West Main Street, Suite 202, Louisville, Kentucky 40202 (“Grantee”).

W I T N E S S E T H:

WHEREAS, Grantor and Grantee have worked diligently to assemble significant land holdings in the Floyds Fork watershed. In addition, Grantee has raised significant funds for land acquisition and park development in order to create new public parklands of the highest quality for the citizens of the Louisville area and will continue to give Grantor representation on the Board of Directors of Grantee so as to better realize this vision. Grantee has also engaged, after a competitive search process, an internationally-recognized landscape planning firm to assist Grantee in creating the 21st Century Parks Master Plan (the “Master Plan”) that will have an integrated vision to convert these properties into a series of new parklands and trails. The Grantee’s Master Plan will also guide the design and construction process for these new public amenities. As a result, both parties desire that certain Grantor properties be incorporated into this planning process, and be maintained and protected in perpetuity for public use and access, and made a part of this new vision for parklands in Louisville.

WHEREAS, Grantor is the owner of certain land located in Jefferson County, Kentucky, more particularly described on Exhibit A (the “Property”) which Grantor desires to be improved, conserved and preserved in accordance with the Master Plan now being developed by Grantee;

WHEREAS, Grantor and Grantee recognize the natural, scenic, open-space value and significance of the Property for public park land, and have the common purpose of improving, conserving and preserving the Property in accordance with the terms of this Agreement and the Master Plan;

WHEREAS, Grantor desires to enter into this Agreement to create in favor of Grantee, its successors and assigns, the perpetual easements and deed restrictions more particularly described below to assist Grantee in improving, conserving and preserving the Property in accordance with the Master Plan;

WHEREAS, the improvement, conservation and preservation of the Property shall be done in accordance with the Master Plan, which is of great importance to Grantor, Grantee, and the people of Louisville Metro / Jefferson County, Kentucky. The parties agree to work in good faith in the creation, development and implementation of the Master Plan;

WHEREAS, Grantor shall retain title to the Property but intends to convey to Grantee all rights in the Property necessary to its improvement, conservation and preservation for public access and use in perpetuity pursuant to the terms of this Agreement and the Master Plan and easements and restrictions of record;

NOW THEREFORE, for and in consideration of Grantee's funding the Master Plan and a portion of Grantor's properties, Grantor hereby agrees as follows:

1. Deed Restrictions.

A. Grantor hereby irrevocably commits the Property for perpetual use as Parks and Open Space in accordance with the Master Plan and authorizes Grantee to implement such Master Plan. The Property shall be owned in perpetuity by Grantor and used only in accordance with the Master Plan. No improvement, construction, leases, new projects, activities or additional restrictions shall occur on the Property, except as provided in the Master Plan or otherwise agreed upon by Grantee in writing as not in conflict with the Master Plan.

B. With funds it has raised, Grantee has acquired or has enabled others, including Grantor, to acquire approximately seventy-eight percent (78%) of the overall acreage to be dedicated to the Master Plan. Grantor is also dedicating properties it has previously acquired equal to approximately twenty-two percent (22%) of the overall acreage to be dedicated to the Master Plan. However, Grantee shall always be responsible for providing all funding necessary to maintain all of these properties at a level consistent with Grantor's public parks. Once construction in accordance with the Master Plan commences, Grantee shall have and thereafter retain the exclusive operational responsibility for maintenance and activities on the Property in accordance with the Master Plan; provided, however, Grantee may at any time assign this responsibility to either Grantor or to a public/private partnership entity; provided, in either case, Grantee obtains Grantor's prior written consent to such assignment.

2. Grant of Easements. Grantor hereby grants and conveys to Grantee the unconditional, perpetual, non-exclusive easements and rights [i] to perform any improvement or construction on the Property it deems necessary to complete and update the Master Plan; and [ii] to have vehicular and pedestrian access, ingress and egress, on, over and across the Property for the purpose of completing, maintaining and operating all aspects of the Property in accordance with the requirements of the Master Plan.

3. Rights of General Public. Grantor and Grantee grant and convey to the general public the perpetual right to access, use and enjoy the Property consistent with the Master Plan and shall not convey the Property to any other entity. Grantor agrees that any through roads constructed on the Property shall be in accordance with county road standards and dedicated as public rights of way and maintained by Grantor.

4. Entire Agreement. This Agreement and any previously recorded deed restriction affecting the Property shall constitute the entire agreement between the Grantor and the Grantee relating to its subject matter.

5. Amendment and Modifications. This Agreement may be canceled, modified or amended only by written agreement executed by both Grantor and Grantee.

6. **Binding Effect and Assignment.** This Agreement shall run with the land and shall be binding upon Grantor, its successors and assigns and shall inure to the benefit of the Grantee, its successors and assigns and Grantee's agents and invitees.

7. **Reversion.** Grantor has the obligation to continue to maintain the Property and to enforce the easement and restrictions according to this Agreement and the Master Plan in the event Grantee is administratively dissolved, files a petition in bankruptcy, admits it cannot pay its debts as they become due or otherwise ceases to exist. All rights granted by this Agreement shall become null and void and all rights in the Property shall revert to Grantor in the event that Grantee:

a.) abandons the Property, or

b.) fails to use the Property according to the Master Plan and the terms of this Agreement and such failure is not cured by Grantee within 90 days of Grantor's notice to Grantee in the manner described in Section 13 below.

8. **Indemnification.** To the extent permitted by law, Grantor agrees to indemnify and hold Grantee harmless from any claims or liabilities which arise out of the Property or the activities thereon.

9. **Subordination of Mortgages.** Grantor and Grantee agree that any mortgages and any mortgagee's rights in the Property shall be subject and subordinate at all times to the rights of Grantee to enforce the purposes of this Agreement.

10. **Severability.** The parties agree that each provision of this Agreement shall be construed independent of any other provision. The invalidity or unenforceability of any particular provision of this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

11. **Recording.** This Agreement shall be recorded in the Office of the Clerk of Jefferson County, Kentucky.

12. **Governing Law.** This Agreement and the obligations of the parties hereunder shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Kentucky in all respects.

13. **Notices.**

A. Any notice, demand or communication required or permitted to be given by any provision of this Agreement will be in writing and will be deemed to have been given when delivered personally or by facsimile (with a hard copy sent within one (1) business day by any other means described in this paragraph) to the party designated to receive such notice, or on the date following the day if sent by a nationally recognized overnight courier, or on the third (3rd) business day after the same is sent by United States certified mail, postage and charges prepaid, directed to the following addresses or to such other or additional addresses as any party might designate by written notice to the other parties:

To Grantor: Louisville/Jefferson County Metro Government
Mayor of Metro Louisville
Louisville Metro Hall
527 West Jefferson Street
Louisville, KY 40202
Facsimile: (502) 574-5354

To Grantee: 21st Century Parks, Inc.
471 W. Main Street, Suite 202
Louisville, KY 40202
Attn: Mr. Kevin Beck
Facsimile: (502) 584-6434

B. Notice of Intention to Undertake Certain Permitted Actions. Grantor shall notify Grantee prior to undertaking any activities which may be inconsistent with the Master Plan and the Agreement so as to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the purpose of this Agreement and the Master Plan. Whenever notice is required, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Agreement and the Master Plan.

C. Grantee's Approval. Where Grantee's approval is required under the terms of this Agreement, such approval shall be granted or withheld in writing within sixty (60) days of receipt of Grantor's written request therefor.

14. Grantee's Remedies. Grantee shall have all legal and equitable remedies to correct any material violation of any covenant, stipulation or restriction herein including the right to seek an injunction against any proposed use of the Property which is inconsistent with the Master Plan.

15. Master Plan. The parties recognize that the Master Plan may be modified by Grantee from time to time in the future, including such modifications as may be set forth in the design and construction plans implementing the conceptual plan. All references herein to "Master Plan" shall include any such modifications.

16. Further Documentation. In the event that other documents, consistent with the terms of this Agreement, are necessary in order to effectuate the Master Plan, Grantee and Grantor each commit to use their best efforts to provide such documentation as soon as practicable.

APPROVED BY THE METRO COUNCIL OF LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT BY RESOLUTION NO. _____, SERIES 2007.

[SIGNATURE ON NEXT PAGE]

IN TESTIMONY WHEREOF, witness the signature of Grantor and Grantee as of the date and year first above written.

Approved as to Form:

GRANTOR:
LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

Assistant County Attorney

By: _____
The Honorable Jerry E. Abramson, Mayor

Exhibit A 21st Century Master Parks Plan.doc

12-3-07

GRANTEE:
21ST CENTURY PARKS, INC.,
a Kentucky nonprofit corporation

By: _____
Daniel H. Jones, President

COMMONWEALTH OF KENTUCKY)
):SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this the ____ day of _____, 2007, by Jerry E. Abramson, as the Mayor of Louisville/Jefferson County Metro Government, on behalf of said entity.

My Commission expires: _____.

Notary Public

COMMONWEALTH OF KENTUCKY)
):SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this the ____ day of _____, 2007, by Daniel H. Jones, as President of 21st Century Parks, Inc., a Kentucky nonprofit corporation on behalf of said corporation.

My Commission expires: _____.

Notary Public

THIS INSTRUMENT PREPARED BY:

Michael B. Vincenti
Wyatt, Tarrant & Combs, LLP
500 West Jefferson Street, Suite 2700
Louisville, KY 40202
(502) 562-7518

Exhibit A 21st Century Master Parks Plan.doc

12-3-07

EXHIBIT A

(Legal Description of Grantor's Property)

[Insert Legal.]

Being the same property acquired by Grantor by Deed dated _____, of record in Deed Book _____, Page _____, in the Office of the Clerk of Jefferson County, Kentucky.

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Exhibit A 21st Century Master Parks Plan.doc

12-3-07